Re Lee Chan Leong; Eddie Lee Kim Tak & Ors v Jurutera Konsultant (SEA) Sdn Bhd & Ors (No 3)

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2-22-682 OF 1998
KAMALANATHAN RATNAM J
8 SEPTEMBER 1999

Civil Procedure *— Contempt of court — Civil contempt by counsel — Counsel wrote to Chief Judge seeking disqualification of presiding judge — Counsel tendered apology to court for contempt — Failure of counsel to clarify matter with Chief Judge — Whether warning alone sufficient*

Lawyers Mr Lee Chan Leong ('Lee') and En Yusuf Khan ('Khan') were ordered to show cause why they should not be dealt with for contempt for making serious and unwarranted allegation against the court and the deputy registrar. Both Lee and Khan apologized unreservedly. Upon both lawyers accepting full responsibility for their conduct and expressing their contrition, the court accepted their apologies and vacated the order to show cause. Lee then informed the court that he had in fact written a letter to the Chief Judge of Malaya seeking disqualification of the High Court judge. He then indicated that since he and Khan had apologized for their conduct and that since the letter to the Chief Judge of Malaya to disqualify the High Court judge was based on ill-founded reasons, and for which he had apologized, he would be writing to the Chief Judge of Malaya withdrawing the said letter. Lee's letter to the Chief Judge of Malaya gave the impression that the High Court judge had settled the matter with him and he had failed to state that he had made false allegations against the court and the deputy registrar. The court then issued a notice for Lee to show cause why he should not be cited for contempt. Lee apologized to the court and conceded that the letter and the second letter sent in substitution of the earlier letter had not fully reflected what actually happened in court.

Held, finding Lee guilty of contempt of court:

(1) Having heard him fully and having allowed his counsel to fully address the court and considering the fact that he offered no defence and had apologized, the court found Lee guilty of contempt of court of failing to tell the Chief Judge of Malaya the truth as to what actually happened and suggesting insidiously that the High Court judge had settled the matter with him (see p 383D–E).

(2) Lee's conduct was so obnoxious and reprehensible that a warning or a caution was totally inappropriate. He had completely forgotten the magnanimity of the court earlier when it forgave him for a more serious charge and which he admitted to by tendering

his full and unreserved apology. Having considered all matters, the court found it appropriate to impose a fine of RM10,000 in default three months' imprisonment (see pp 383H–384A).

[Bahasa Malaysia summary

Peguam En Lee Chan Leong ('Lee') dan En Yusuf Khan ('Khan') diminta untuk menunjukkan sebab mengapa mereka tidak patut dihukum kerana menghina mahkamah selepas membuat pengataan yang serius dan tidak berasas terhadap mahkamah dan timbalan pendaftar. Kedua-dua Lee dan Khan meminta maaf sepenuhnya. Selepas kedua-dua peguam mengaku bertanggungjawab sepenuhnya untuk tindakan mereka dan menunjukkan keinsafan, mahkamah menerima mohon maaf mereka dan telah mengetepikan perintah untuk menunjukkan sebab. Kemudian Lee memberitahu mahkamah bahawa dia telah menulis surat kepada Hakim Besar Malaya meminta agar hakim Mahkamah Tinggi tersebut hilang kelayakan. Beliau mengatakan bahawa oleh kerana beliau dan Khan telah meminta maaf untuk tindakan mereka dan oleh kerana surat kepada Hakim Besar Malaya untuk membuat hakim Mahkamah Tinggi tersebut hilang kelayakan adalah berdasarkan sebab-sebab yang tidak berasas, di mana beliau telah meminta maaf, beliau akan menulis surat kepada kepada Hakim Besar Malaya untuk menarik balik surat tersebut. Surat Lee kepada Hakim Besar Malaya menunjukkan seolah-olah bahawa hakim Mahkamah Tinggi telah menyelesaikan perkara tersebut dengannya dan beliau gagal untuk menyatakan bahawa beliau telah membuat pengataan-pengataan yang palsu terhadap mahkamah dan timbalan pendaftar. Kemudian mahkamah mengeluarkan notis terhadap Lee untuk menunjukkan sebab mengapa beliau tidak patut dihukumkan untuk menghina mahkamah. Lee telah meminta maaf kepada mahkamah dan bersetuju bahawa surat tersebut dan juga surat kedua yang dihantar untuk menggantikan surat yang lebih awal tidak membayangkan apa yang sebenarnya berlaku di mahkamah.

Diputuskan, mendapati Lee bersalah kerana menghina mahkamah:

(1) Selepas mendengar beliau sepenuhnya dan selepas membenarkan peguamnya untuk membuat hujahan penuh di hadapan mahkamah dan mempertimbangkan fakta bahawa beliau tidak mengemukakan sebarang pembelaan dan telah meminta maaf, mahkamah mendapati Lee bersalah untuk penghinaan mahkamah kerana gagal untuk memberitahu Hakim Besar Malaya apa yang sebenar telah berlaku dan mencadangkan secara halus bahawa hakim Mahkamah Tinggi telah menyelesaikan perkara tersebut dengannya (lihat ms 383D–E).

(2) Tindakan Lee adalah sangat kurang menyenangkan dan patut dikeji sehinggakan amaran adalah tidak sesuai. Beliau telah

melupakan sepenuhnya sifat pemurah mahkamah yang terdahulu apabila ia memaafkannya untuk dakwaan yang lebih serius dan di mana beliau mengaku dengan memberikan kenyataan penuh untuk meminta maaf. Selepas mempertimbangkan semua perkara, mahkamah mendapati adalah sesuai untuk mengenakan denda sebanyak RM10,000 dan tiga bulan penjara jika ingkar (lihat ms 383H–384A).]

Notes

For cases on contempt of court generally, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1083–1166.

Cases referred to

Eddie Lee Kim Tak & Ors v Jurutera Konsultant (SEA) Sdn Bhd & Ors [1999] 2 MLJ 425 (refd)

Yusuf Khan (*Lee Chan Leong* with him) (*Messrs Chan Leong & Co*) for the plaintiffs.

Joseph Yeo (*Messrs Joseph Yeo*) for the defendants.

Cur Adv Vult

Kamalanathan Ratnam J:

Facts

The facts relating to the filing of this suit have been documented in the first judgment I delivered in respect of this suit (see *Eddie Lee Kim Tak & Ors v Jurutera Konsultant (SEA) Sdn Bhd & Ors* [1999] 2 MLJ 425).

Mr Lee Chan Leong (Lee) of the firm of Chan Leong & Co acted as solicitors for the plaintiffs whilst En Yusuf Khan (Khan) acted as counsel. In the first judgment delivered on 4 January 1999, I rejected the plaintiffs' application for an injunction to restrain the first defendant from disposing of various assets. There is no appeal against that decision.

In the meantime, the plaintiffs applied to strike out the defendants' counterclaim and the said application came up for hearing before the Deputy Registrar (DR). It is from thenceforth that foreboding and sinister events began to take place. The DR having heard full arguments from both sides dismissed the plaintiffs' application to strike out the defendants' counterclaim. The plaintiffs thus appealed and the appeal was set to be heard by me on 9 April 1999.

Events that occurred on 8 April 1999 in chambers

Lee had, a day earlier, telephoned my secretary and fixed an appointment for me to meet both counsel on 8 April 1999 before I heard the appeal on 9 April 1999. On 8 April 1999, Khan and Lee appeared for the plaintiffs whilst Joseph Yeo (Yeo) appeared for the defendants.

Khan then shocked me by producing three letters all of which are reproduced in full.

Letter dated 5 April 1999 from Chan Leong & Co

Our Ref: LCL/L/050/98/LKT
Your Ref:
Date: 5 April 1999

Messsrs Kiru & Yong,
Advocates and Solicitors,
No 10-12, 3rd Floor,
Jalan SS 21/35, Damansara Utama,
47400 Petaling Jaya.

By fax No 603-715 5162 and by post

Dear Sirs,

Re: Mahkamah Tinggi Kuala Lumpur Guaman
No: S2-22-682-98
Eddie Lee Kim Tak & 2 lagi v Jurutera Konsultant (SEA) S/B & 2 lagi

We refer to the conversation between your Mr Kiru and our counsel Mr Yusuf Khan on 5 April 1999 at 9.00 am at the High Court Denmark House, Kuala Lumpur and place on record that your Mr Kiru confirmed with our Mr Yusuf Khan as follows:

During the proceeding before the learned Deputy Registrar on 1 April 1999 when Mr Yusuf Khan raised the matter of 'issue estoppel' in reference to the finding by the learned judge of the Shah Alam High Court on the defendants' counterclaim and that the learned deputy registrar was not at liberty to re-open the issue on the defendants' counterclaim or to decide contrary to or in conflict with the finding of the learned judge of the Shah Alam High Court, the learned Deputy Registrar said she was not bound by the said finding and that His Lordship Dato' Kamalanathan Ratnam also said His Lordship (Dato' Kamalanathan Ratnam) was not bound by the said finding.

Yours faithfully,

Sgd
.....
Messrs Chan Leong & Co

Clients,
No 26, Jalan 14/37B,
46100 Petaling Jaya.

By fax No 603-756 8450 and by post

Letter dated 6 April 1999 from Kiru & Yong

Our Ref: LCL/L/050/98/LKT
Date: 6 April 1999

Chan Leong & Co
Advocates and Solicitors,
14-2 Jalan SS 19/1G,
Subang Jaya,
47500 Petaling Jaya.

Dear Sirs,

Re: Mahkamah Tinggi Kuala Lumpur Guaman No S-2-22-682-98
Eddie Lee Kim Tak & 2 lagi v Jurutera Konsultant (SEA) S/B & 2 lagi

We refer to the above matter and to your letter dated 5 April 1999 and confirm the conversation between Mr Yusuf Khan and myself at the premises of the Kuala Lumpur High Court on the morning of 5 April 1999.

I would like to clarify that the contents of the conversation as recorded by Mr Yusuf Khan is not accurate. As I recollect, the learned deputy registrar having dismissed your clients' application to strike out the defendants' counterclaim was asked by Mr Yusuf Khan whether the learned Deputy Registrar had considered his submissions on issue estoppel. To which, the learned Deputy Registrar answered in the affirmative. I also recollect the learned Registrar mentioning the decision of His Lordship Mr Justice Dato' Dr Kamalanathan Ratnam, but I cannot recollect precisely in what context the learned Deputy Registrar mentioned of His Lordship's judgment.

Thank you.

Yours faithfully,

Sgd

.....

K Kirubakaran
cc Joseph Yeo

Letter dated 6 April 1999 from Chan Leong & Co

Our Ref: LCL/L/050/98/LKT
Your Ref:
Date: 5 April 1999

Messsrs Kiru & Yong,
Advocates and Solicitors,
No 10-12, 3rd Floor,
Jalan SS 21/35, Damansara Utama,
47400 Petaling Jaya.

By fax No: 603-715 5162 & by post

Dear Sirs,

Re: Mahkamah Tinggi Kuala Lumpur Guaman No S2-22-682-98
Eddie Lee Kim Tak & 2 lagi v Jurutera Konsultant (SEA) S/B & 2 lagi

Reference to your letter of 6 April 1999, kindly be informed that the contents thereof are contrary to what transpired at the said proceeding which you have admitted to our counsel Mr Yusuf Khan.

2 In any event, despite your assertion to the contrary, we are seeking an appointment to see his Lordship Dato' Dr Kamalanathan Ratnam on

7 April 1999 and shall appreciate your presence thereat as assured by you and Mr Joseph Yeo to our counsel Mr Yusuf Khan. A

Yours faithfully,

Sgd

.....

Messrs Chan Leong & Co B

Messrs Joseph Yeo,
Advocates and Solicitors,
Suite 23.08, 23rd Floor, Plaza 138,
50450 Kuala Lumpur.

(Your presence thereat as assured to our counsel Mr Yusuf Khan is appreciated.) C

By fax No 603-925 2099 and by hand

Clients,
No 26, Jalan 14/37B,
46100 Petaling Jaya. D

By fax No 603-756 8450 and by post

The first letter gave me the distinct impression that it was Khan's and Lee's belief that I had directed my DR to decide in the like manner that I did in the application for the injunction. E

It is necessary to repeat certain salient facts for the purposes of this appeal, although I have narrated them in the earlier reported judgment.

The plaintiffs filed the writ and soon thereafter took out an O 14 application before the defence was filed. However, by the time the O 14 application was heard and judgment given, the defendants had already filed F the defence which contained a counterclaim.

The learned judge who had earlier heard this O 14 application gave judgment for the plaintiffs in respect of all prayers sought except that in respect of prayer (d) which sought a declaration that the plaintiffs are not liable to the defendants for any sum of money, the learned judge did not G make any order.

I have dealt with this aspect very clearly in my second judgment dated 10 June 1999 which was my dismissal of the plaintiffs' appeal against the learned DR's rejection of the plaintiffs' application to strike out the counterclaim. The plaintiffs sought, both in the application for the H injunction and on the appeal, to argue that the question of the counterclaim having no merits was disposed of by the learned judge when he heard the O 14 application before the file was transferred to this court in Kuala Lumpur. The plaintiffs held this view because in his judgment, the learned judge had considered the issue of the counterclaim and had stated in his concluding paragraph that 'there is no bona fide 'counterclaim' raised by I the defendants in the circumstances of the case'. However on perusing the learned Judge's notes of evidence where he had made no mention of the

counterclaim being considered and further, coupled with the fact that he made no order at all in respect of prayer (d) and with the added fact that neither Lee nor Khan had at any time seen the learned judge to correct any misapprehension if any as to whether he had indeed considered the counterclaim, I held in my judgment that the views expressed by the learned judge in respect of the counterclaim was obiter dicta since the parties had not argued the issue of the counterclaim.

Coming back to the three letters tendered to me by Khan on 8 April 1999, and whilst keeping to myself the impression I had gathered upon reading the three letters, I put the question to Khan this way, and I quote from my notes:

> What do you want in the light of the three letters?

My fears were confirmed when Khan replied, and I quote:

> I seek this court's indulgence in view of the anxiety that incident has caused and without in any way doubting your Lordship's impartiality and integrity as has been noted by all and sundry, that in view of this fear our client may harbour that his appeal may be futile despite my assurances.
>
> He has in fact instructed solicitors as well as counsel to apply for a transfer of the hearing of the appeal but I have told him to wait. I will see your Lordship first and state all the facts and leave it to your Lordship's suggestion in the matter and if the clients are inclined to accept the suggestion of his Lordship the matter will end here.

When I queried Khan as to what he meant by saying 'the matter will end here', he astounded me further by saying, 'I was hoping that your Lordship may suggest this, that your Lordship will on your own initiative will write to the Chief Judge of Malaya since there is this doubt in the litigant the matter ought to be heard by another judge'. That it was the plaintiffs' and his lawyers' view that I had directed my DR how to decide was further illustrated when Lee himself in addressing me after Khan had spoken said:

> It is the remarks made by the learned DR which have created some confusion ...

and repeated by Khan in conclusion when he said:

> It is the remark that has created confusion and doubt in the mind of my clients, ie the first plaintiff, Eddie Lee Kim Tak. This doubt is harboured by the first plaintiff who is also the MD of the third.

I then adjourned proceedings to the next day.

Events that occurred on 9 April 1999 in open court

As a very serious allegation had been cast upon this court and its DR, I decided that in the interest of all parties, the matter be dealt with in open court. I directed that Mr Kirubakaran, who wrote the second letter, be present together with my DR to tell the court if he had heard the DR say that she was directed by the court how to decide the matter.

When Mr Kirubakaran appeared at 11.00am. I invited him to read all three letters and also read back to him the earlier notes of evidence recorded on 8 April 1999. I also read to him the notes as recorded by the DR as to what actually transpired before her upon the hearing of the application to strike out the defence. Mr Kirubakaran confirmed what my DR had said, that is, that she had dismissed the application and had concurred with the views expressed by me in my written judgment dated 4 January 1999 in respect of the application for an injunction. There was no question at all of me directing the DR how to decide the issue.

In fact, to specifically clarify this issue, I reproduce herewith the recorded discourse between me and Mr Kirubakaran in court:

Court to Mr Kiru:	Did the contents of the letter from Chan Leong & Co dated 5 April 1999 give you the impression that the judge had discussed with the DR the matter that she was deciding upon and the decision which you went to receive?
Mr Kiru:	Yes. That was why I made that response.
Mr Kiru:	I also wish to add that the learned Deputy had asked me what was my involvement in the matter when I introduced myself. I said that I am only representing Yeo as counsel and I also indicated that Joseph Yeo had suggested that if the matter do go for trial he would be seeking my services as a co-counsel for the trial. To date I have not been legally retained as counsel.

After all this evidence was recorded, I made a finding that there was sufficient evidence for both Khan and Lee to show cause why they should not be dealt with for contempt for making serious and unwarranted allegation against the court and the DR.

No sooner had I announced the said finding, both Khan and Lee apologized unreservedly and withdrew all three letters. Upon both lawyers accepting full responsibility for their conduct and expressing their contrition, this court, notwithstanding such serious accusations of impropriety which were totally unfounded being levelled against it, accepted their apologies and in all magnanimity vacated the order to show cause and fixed the hearing of the appeal to 11 May 1999.

Lee's subsequent conduct

Lee then informed the court, before I adjourned proceedings, that he had in fact written a letter to the Chief Judge Malaya seeking my disqualification. He then indicated that since he and Khan had apologized for their conduct and that since the letter to the Chief Judge to disqualify me was based on ill-founded reasons, and for which he has since apologized, he would be writing to the Chief Judge Malaya withdrawing the said letter.

Instead of doing just that, he wrote a letter dated 10 April 1999 which reads as follows:

Our Ref: LCL/L/050/98/LKT
Your Ref:
Date: 10 April 1999

Yang Amat Arif
Hakim Besar Malaya,
Mahkamah Persekutuan Malaysia,
Kuala Lumpur. Dengan Tangan

Yang Amat Arif,

Per: Mahkamah Tinggi Kuala Lumpur Guaman No S2-22-682-98
(Mahkamah Tinggi Shah Alam Guaman No MT1-22-785-98)
Eddie Lee Kim Tak & 2 lagi v Jurutera Konsultant (SEA) S/B & 2 lagi

Dengan segala hormatnya, kami merujuk kepada perkara tersebut di atas.

2 Kami menulis untuk memaklumkan Yang Amat Arif bahawa perkara yang dibangkitkan dalam surat kami terdahulu telahpun diselesaikan dengan sewajarnya oleh Yang Arif Mahkamah Tinggi Kuala Lumpur pada 9 April 1999. Oleh itu, kami secara rendah hati memohon untuk menarik balik surat tersebut dan sesungguhnya meminta maaf atas segala kesulitan yang dikenakan.

Sekian, terima kasih.

Yang benar,

Sgd
.....
Tetuan Chan Leong & Co

Yang Arif,
Mahkamah Tinggi,
Kuala Lumpur Dengan Tangan

Timbalan Pendaftar,
Mahkamah Tinggi,
Kuala Lumpur. Dengan Tangan

This letter gave the impression that I had settled the matter with Mr Lee which was far from the truth. In order to put the record straight, I wrote to the Chief Judge Malaya as follows:

13 April 1999

Yang Amat Arif
Hakim Besar Malaya,
Mahkamah Persekutuan Malaysia,
Kuala Lumpur.

Yang Amat Arif,

Per: Mahkamah Tinggi Kuala Lumpur Guaman No S2-22-682-98
(Mahkamah Tinggi Shah Alam Guaman No MT1-22-785-98)
Eddie Lee Kim Tak & 2 lagi v Jurutera Konsultant (SEA) S/B & 2 lagi

Saya merujuk kepada perkara di atas dan kepada surat bertarikh 8 April 1998 (seharusnya 1999) daripada Tetuan Chan Leong & Co memohon supaya saya tidak layakkan diri mendengar kes yang tersebut di atas.

2 Selepas itu, saya juga telah menerima sepucuk surat daripada firma yang sama bertarikh 10 April 1999 memberitahu Yang Amat Arif bahawa perkara tersebut telahpun diselesaikan.

3 Surat tersebut memberi gambaran bahawa setelah suatu aduan dibuat dan setelah memohon agar saya tidak meneruskan dengan pendengaran kes ini, saya telah berunding dengan firma tersebut dan telah menyelesaikan perkara itu. Ini adalah jauh daripada apa yang sebenarnya telah berlaku. Encik Yusuf Khan dan En Lee Chan Leong telah menemui saya dan meminta agar saya tidak mendengar kes ini dan setelah saya mengadakan suatu soal-siasat dalam Mahkamah Terbuka saya telah memutuskan bahawa terdapat alasan yang mencukupi bagi mensabitkan kedua-dua peguam dengan kesalahan menghina mahkamah dan dengan tujuan memberikan peluang kepada mereka untuk menunjuk sebab saya telahpun mahu menetapkan suatu tarikh bagi mereka membuat demikian, kedua-dua peguam telah dengan rendah diri meminta maaf kerana mencemarkan nama baik dan keutuhan Mahkamah ini. Mereka tanpa syarat telah menunjukkan rasa sesal mereka dan menarik balik semua tiga surat bertarikh 5 April 1999, 6 April 1999 dan 6 April 1999. Saya telah memaafkan mereka atas dasar ini dan tidak meneruskan dengan prosiding menghina mahkamah. Encik Lee Chan Leong seharusnya memberitahu Yang Amat Arif keseluruhan apa yang sebenarnya telah berlaku dan tidak menyatakan bahawa perkara ini telahpun diselesaikan. Ini adalah satu lagi keadaan di mana peguam tersebut tidak memberitahu kebenaran sesuatu yang telah berlaku.

4 Bersama-sama ini disertakan Nota Keterangan untuk kes ini pada 8 April 1999 dan 9 April 1999 untuk tatapan Yang Amat Arif.

Yang benar,

Sgd
(Dato' Dr Kamalanathan Ratnam)
Hakim
Mahkamah Tinggi Kuala Lumpur

skTetuan Chan Leong & Co
Peguambela & Peguamcara
14-2, Jalan SS 19/1G
Subang Jaya
47500 Petaling Jaya

(UP Mr Lee Chan Leong)

I then directed my DR to write a notice dated 16 April 1999 for Lee to show cause why he should not be cited for contempt. The notice reads as follows:

16 April 1999
Tetuan Chan Leong & Co
Peguambela & Peguamcara
14-2, Jalan SS 19/1G
Subang Jaya
47500 Petaling Jaya.

(UP Mr Lee Chan Leong)

Tuan

Per: Mahkamah Tinggi Kuala Lumpur Guaman No S2-22-682-98
(Mahkamah Tinggi Shah Alam Guaman No MT1-22-785-98)
Eddie Lee Kim Tak & 2 lagi v Jurutera Konsultant (SEA) S/B & 2 lagi

Adalah saya merujuk kepada surat tuan Bil LCL/L/050/98/LKT bertarikh 10 April 1999 kepada Yang Amat Arif Hakim Besar Malaya di mana tuan menyatakan bahawa perkara yang dibangkitkan dalam surat tuan terdahulu telahpun diselesaikan dengan sewajarnya oleh Yang Arif Hakim Mahkamah Tinggi Kuala Lumpur pada 9 April 1999.

2 Adalah saya diarahkan oleh Yang Arif Dato' Dr Kamalanathan Ratnam untuk menyatakan bahawa surat tuan telah memberikan suatu gambaran yang tidak tepat berkenaan apa yang telah sebenarnya berlaku selepas tuan menghantar surat tuan yang terdahulu kepada Yang Amat Arif Hakim Besar Malaya. Surat tuan telah memberikan gambaran bahawa suatu rundingan telah diadakan dengan Yang Arif Dato' Dr Kamalanathan Ratnam berkenaan penyelesaian ini. Maka tuan diminta menunjuk sebab kenapa tuan tidak perlu disoal-siasat di Mahkamah Terbuka kerana tidak memberitahu segala apa yang sebenarnya berlaku dalam surat tuan kepada Yang Amat Arif Hakim Besar Malaya.

3 Tarikh tunjuk sebab di hadapan Yang Arif Dato' Dr Kamalanathan Ratnam ditetapkan pada 27 April 1999 di Mahkamah Terbuka pada pukul 9.00 pagi. Tuan boleh diwakili oleh peguam sekiranya tuan fikirkan perlu.

Berkhidmat Untuk Negara

Saya yang menurut perintah,

Sgd

(Tan Ghee Phaik, Patricia)
Timbalan Pendaftar
Sivil 2
Mahkamah Tinggi
Kuala Lumpur

skTetuan Joseph Yeo
Peguambela & Peguamcara
Suite 23.08, 23rd Floor, Plaza 138,
No 138, Jalan Ampang
50450 Kuala Lumpur

The show cause

On 27 April 1999 Lee appeared before me in open court and was represented by Khan. From the outset, Lee apologized to the court and tendered a written apology which I had marked as exh A and which reads as follows:

> At the outset and before I say anything, I profusely apologize to this Honourable Court and I do so with full humility.

As for the explanation asked of me in this show cause proceeding, I wish to state as follows, without in any way qualifying my profuse apology which I just made.

The letter dated 10 April 1999 addressed to the Honourable Chief Judge of Malaya was written consequent to the inquiry held by Your Lordship and after Your Lordship ruled that the application to the Chief Judge of Malaya for the transfer of the hearing of the appeal constituted contempt of court, which I have tendered my unreserved apology and which Your Lordship had graciously accepted and considered the matter closed.

I recall that when my counsel, my client and I indicated to Your Lordship that our first letter to the Chief Judge of Malaya would be withdrawn, Your Lordship replied that it is up to us to do so, if so inclined, and that Your Lordship will be submitting a full report to the Chief Judge of Malaya regardless.

It is in that context that the letter dated 10 April 1999 was written with the purpose of withdrawing our first letter to Chief Judge of Malaya.

I regret that the phrase used in the said letter dated 10 April 1999 has given rise to Your Lordship the impression that there was a discussion between Your Lordship and me. When I phrased the letter dated 10 April 1999 in the way I did, I honestly and sincerely believe that I need not elaborate on what had happened on 08 April 1999 and 9 April 1999 as Your Lordship's intended report to the Honourable Chief Judge of Malaya would suffice to give a complete picture to the Honourable Chief Judge of Malaya. And when I wrote the letter, I intended it to mean that Your Lordship had appropriately dealt with the matter and that my firm was withdrawing the first letter to the Honourable Chief Judge of Malaya and apologizing for all inconvenience caused.

That letter was written in good faith and without any untoward intention whatsoever.

However, when the learned Deputy Registrar informed me that Your Lordship was displeased with the letter, in that it gives the impression as stated in the Deputy Registrar's letter to show cause, I immediately sent another letter dated 16 April 1999 to the Chief Judge of Malaya to give the full picture, which I have already given a copy to all parties concerned.

It was never my intention especially after Your Lordship had graciously accepted my apology on 9 April 1999 to do anything whatsoever which can in any way be contemptuous of this Honourable Court. My understanding of Bahasa may not be up to the level of Your Lordship but I intended to state in the letter that Your Lordship had appropriately dealt with the matter and consequent thereto I was withdrawing the first letter to the Honourable Chief Judge of Malaya.

Once again, I express my sincere and profuse apology for having caused Your Lordship the impression that I have acted in contempt of this Honourable Court. I am contrite and put myself at Your Lordship's mercy in the circumstances with the hope that Your Lordship will accept my apology and explanation and will not proceed further in this matter.

Sgd

(Lee Chan Leong)
27 April 1999

I then pointed out to Lee that his written apology marked A contained factual inaccuracies. I pointed out to him with reference to para 3 that I did not rule that the application to the Chief Judge of Malaya for the transfer of the hearing of the appeal constituted contempt of court. In fact, other than merely saying that he could do what he wanted with that letter, I had made no further comments. I pointed out to Lee that what I had held amounting to contempt was his allegation that I had indicated to my DR the manner in which she was to decide on the application to strike out the defence. Again, I referred to para 5 of the written apology and pointed out that he had not told the truth to the Chief Judge Malaya in that he had failed to state that he had made false allegations against the court and the DR. I then referred him to his second letter to the Chief Judge Malaya dated 16 April 1999 which was sent in substitution of the earlier letter dated 10 April 1999 and asked him whether even in that letter he had reflected what actually happened in court. Lee readily conceded that he had 'not fully reflected and it should have been so'.

Having heard him out fully and also having allowed his counsel, Khan, to fully address me and considering the fact that he had offered no defence and had apologized, I found him guilty of contempt of court of failing to tell the Chief Judge Malaya the truth as to what actually happened and suggesting insidiously that the judge had settled the matter with him.

Plea in mitigation

His plea in mitigation was that he was inexperienced in many aspects. To my mind, this plea is again a reflection of Lee's insincerity to the court. He informed the court that he was for nearly five years attached to the Attorney General's Chambers. To my mind, it is a known fact that an officer in the Attorney General's Chambers no doubt will have varied experience. He then worked as a legal assistant in two different firms before setting up his own firm on 1 January 1998. In fact, with more than seven years' experience he is entitled to even have a chambering student under him. Further, he must have felt sufficiently confident and experienced enough to have started his own legal practice instead of continuing to work as a legal assistant and to gain further experience, if he felt he lacked the experience. So even to the end, Lee has been far from candid to the court.

In fact, both Lee and his counsel said nothing conducive to reflect the court's sympathetic approach. It was the court that asked truly mitigating questions and elicited the response that he is married with two children aged 6 years and 2 years. It was this last bit of evidence elicited by the court that prevented a custodial sentence. Lee's conduct is so obnoxious and reprehensible that a warning or a caution was totally inappropriate. He had completely forgotten the magnanimity of the court earlier when it forgave him for a more serious charge and which he admitted to by tendering his

full and unreserved apology. Having considered all matters I found it appropriate to impose a fine of RM10,000 in default 3 months' imprisonment and ordered that the said fine be paid by 1.30pm of the same day.

Order accordingly.

Reported by Jafisah Jaafar